United Brotherhood of Carpenters and Joiners of America, Local 1307 *and* Dearborn Village, L.L.C. and United Union of Roofers, Waterproofers, and Allied Workers, Local No. 11 and J & P Building Maintenance, Inc., Party in Interest. Case 13–CD–555

May 24, 2000

DECISION AND ORDER QUASHING NOTICE OF HEARING

BY MEMBERS FOX, LIEBMAN, AND BRAME

The charge in this Section 10(k) proceeding was filed on June 26, 1998, by Dearborn Village, L.L.C. (Dearborn Village), alleging that the Respondent, United Brotherhood of Carpenters and Joiners of America, Local 1307 (Local 1307), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing J & P Building Maintenance, Inc. (the Employer), to assign certain work to employees represented by Local 1307 rather than to employees represented by United Union of Roofers, Waterproofers, and Allied Workers, Local 11 (Local 11). The hearing was held on July 31, August 20–21, and September 9, 1998, before Hearing Officer Lisa Friedheim-Weis. Thereafter, Local 1307 and Local 11 filed briefs in support of their positions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated that Dearborn Village is an Illinois corporation and is engaged in the business of housing/residential development. The parties further stipulated, and we find, that Dearborn Village is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. All parties stipulated, and we find, that Local 1307 and Local 11 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts

Dearborn Village develops multifamily residential properties, including the property at issue here at 18th and State Streets, Chicago, Illinois, which consists of 198 townhouses. Each unit under construction at Dearborn Village has both inclined and flat roof surfaces. Shingles are applied to the inclined roofs and modified roofing is applied to the flat roofs.[1] Dearborn Village subcontracted the roofing work to the Employer. The work assigned to the Employer included the application of shingle and modified roofing, and the installation of gutters and flashing.

The Employer and Local 11 have had a collective-bargaining relationship which has been embodied in a series of collective-bargaining agreements, the most recent of which was effective June 1, 1995, through May 31, 1999. The contract was not limited to shingling work, but included, inter alia, the application of modified roofing. The Employer also had a collective-bargaining agreement with Sheetmetal Workers Local 73 (Local 73). At the time of the hearing, the Employer's employees represented by Local 11 were performing the shingling and modified roof work. The Employer's employees represented by Local 73 were performing the installation of the gutters and flashing, although the Local 11-represented employees sometimes assisted in this work. The Employer does not have a collective-bargaining agreement with Local 1307, which is a "specialty" local union specializing in shingling, siding, and insulation.

On May 13, 1998,[2] the Employer hired Joseph Melaniphy, Richard Wagner, and Peter Johnson to perform the roofing work.[3] Melaniphy, Wagner, and Johnson were members of Local 1307 at the time of their hire. Eugene Jorgensen, a Local 1307 business agent, testified that upon learning on May 13 that there were shinglers on the roof at Dearborn Village, he drove to the Dearborn Village jobsite where he observed Melaniphy, Wagner, and Johnson performing shingling work. When Jorgensen informed them that the Employer was not signatory to a collective-bargaining agreement with Local 1307, they responded that James Tucci, the Employer's president, wanted to execute an agreement with Local 1307.

Jorgensen contacted Tucci on either May 17 or 18. Since Jorgensen did not have authority over contracts, he told Tucci to call Peter DiRaffaele, the assistant to the president of the Carpenters District Council, to arrange for a meeting at which Tucci could execute a collective-bargaining agreement with Local 1307. Tucci and DiRaffaele arranged to meet on June 18. Tucci testified that he appeared at the District Council as scheduled, but that DiRaffaele could not be located. After waiting 10 minutes, Tucci left without executing a contract with Local 1307. DiRaffaele testified that he called Tucci at his office on June 22 to see whether Tucci wanted to arrange another appointment. Later that day, Tucci informed DiRaffaele that he didn't need to sign a contract with Local 1307 be-

[1] Michael Kennedy, Dearborn Village's project manager, testified that modified roofing is "like a rubberized sheet that's heated, adhered to the substrate," of flat roof surfaces. (Tr. 40.)

[2] All dates hereafter refer to 1998.

[3] In its posthearing brief, Local 11 stated that the Employer hired Melaniphy, Wagner, and Johnson "[i]n early June." In their applications for membership in Local 11, however, Melaniphy, Wagner, and Johnson each put down May 13, 1998, as the date of his employment by the Employer (Local 11 Exhs. 4, 5, and 6, respectively). Local 11 Exhs. 4, 5, and 6 relate, respectively, to Melaniphy, Wagner, and Johnson. Each exhibit consists of four documents: (1) a letter dated June 18 from the Employer to Local 11 requesting permission to hire the respective employee at the journeyman level; (2) an application for membership in Local 11 from the respective employee dated June 22; (3) a dues-checkoff authorization dated June 22 from the respective employee; and (4) a Local 11 financial statement indicating that on June 22 the respective employee paid an initiation fee to Local 11.

cause shingling work was also included in the Local 11 agreement. Also on June 22, the Employer called Local 11 and informed it that "they [i.e., Melaniphy, Wagner, and Johnson] were coming over." On that same date, Melaniphy, Wagner, and Johnson applied for membership in Local 11, signed dues-checkoff authorizations, and paid initiation fees to join Local 11.[4]

On June 26, Jorgensen initiated a strike against the Employer at the Dearborn Village project. Jorgensen testified that he was striking for a contract with the Employer because Local 1307-represented employees were working for it without a contract. Jorgensen and three other picketers appeared at the jobsite at 5:45 a.m. and left the jobsite at approximately 2 p.m. They carried picket signs that read, "Strike for a Contract Against J & P Building Maintenance, Incorporated." The Employer's employees left the jobsite at approximately 11:15 a.m. Jorgensen testified that after Dearborn Village filed the charge in this case, he "felt that he should talk to Mr. Lucas [the Local 11 business representative] concerning this." Jorgensen further testified that he informed Lucas that Melaniphy, Wagner, and Johnson were still current members of Local 1307 when Jorgensen and Lucas met on July 8 at the Dearborn Village jobsite. Jorgensen and Lucas discussed, but did not resolve, the issue.

B. The Work in Dispute

The work in dispute is the shingling work performed by the employees of J & P Building Maintenance, Inc., at the Dearborn Village Townhomes jobsite located at 18th Street and State Street in Chicago, Illinois.

C. The Contentions of the Parties

Local 1307 contends that the notice of hearing should be quashed.[5] In support of the motion to quash, Local 1307 argues that the present controversy is not a jurisdictional dispute within the meaning of Section 10(k) of the Act because the present "dispute [is] not about the assignment of work which was being performed by Local 1307 members but rather it [is] about signing an [a]greement" to protect those Local 1307 members. Local 1307 further contends, however, that if the Board should find that a bona fide jurisdictional dispute exists, the work should be awarded to those employees who are represented by it based on, e.g., area and industry practice, economy and efficiency of operations, and relative skills.

Local 11 contends that a jurisdictional dispute does exist and that there is no agreed-upon method to resolve the dispute. In support of its contention that this is a jurisdictional dispute, Local 11 relies on Local 11 Exhibits 4, 5, and 6 to contend that Local 11 had admitted Melaniphy, Johnson, and Wagner into membership on June 22. Asserting, in effect, that as of that same date, Melaniphy, Johnson, and Wagner were no longer members of Local 1307, Local 11 contends that Local 1307's picketing on June 26 was for a purpose proscribed under Section 8(b)(4)(D) of the Act because "[t]he Carpenters did, in fact, attempt to take away the assignment of the shingling work from employees represented by Roofers Local 11." Local 11 further contends therefore that the Board should deny Local 1307's motion to quash the notice of hearing.

Local 11 argues that the disputed work should be awarded to employees it represents based on the factors traditionally considered by the Board in resolving jurisdictional disputes. Specifically, Local 11 argues that the factors of certification and collective-bargaining agreements, employer preference and past practice, relative skills and safety, industry practice, and economy and efficiency favor an award of the disputed work to employees represented by it.

At the hearing, the Employer also contended that a jurisdictional dispute exists and that there is no agreed-upon method to resolve the dispute. The Employer's "preference is to use Local 11" because when the Dearborn Village project is over, the Employer has other work that "can keep them [i.e., the Local 11-represented employees] busy and keep them off the unemployment role [sic]." In this regard, the Employer explained that it "would almost rather keep them in the company," because if they went on unemployment, when the Employer needed them back again "they're gone or with another company."

D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. On the record before us, we are not satisfied that there is reasonable cause to believe that any such violation has occurred.

Although Local 11 and the Employer have framed the issues in terms of a work assignment dispute, it is evident that the dispute is not over the assignment of work to one group of employees rather than to another group within the meaning of Section 8(b)(4)(D). Rather, as argued by Local 1307, the dispute involves the question of which union will represent the employees who are currently performing the shingling work. None of the parties has raised any objection to the performance of the shingling work by the Employer's current employees. On the contrary, the Employer would like to retain its current employees, but prefers that Local 11 represent them. Local 11 and Local 1307 dispute only which union should represent the employees currently performing the shingling work at the Dearborn Village jobsite.

[4] See Local 11 Exhs. 4, 5, and 6 discussed above at fn. 3.

[5] At the July 31 hearing, Local 1307 moved to quash the notice of hearing. The hearing officer referred the motion to quash the notice of hearing to the Board for ruling.

It is well established that a dispute within the meaning of Section 8(b)(4)(D) requires a choice between two competing groups.[6] In this regard, the Board has stated:

> There must, in short, be either an attempt to take a work assignment away from another group, or to obtain the assignment rather than have it given to the other group.
>
> . . . .
>
> A demand for recognition as bargaining representative for employees doing a particular job, or in a particular department, does not to the slightest degree connote a demand for the assignment of work to particular employees rather than to others.[7]

Thus, in light of the foregoing, we conclude that the dispute here does not concern the assignment of work to one group of employees rather than another within the meaning of Section 8(b)(4)(D). Accordingly, as this matter is not a jurisdictional dispute within the meaning of Section 10(k), we shall quash the notice of hearing.

ORDER

It is ordered that the notice of hearing issued in this case is quashed.

[6] *Food & Commercial Workers Local 1222 (FedMart Stores)*, 262 NLRB 817 (1982); *Teamsters Local 222 (Jelco, Inc.)*, 206 NLRB 809 (1973).

[7] *Laborers Local 1 (DEL Construction)*, 285 NLRB 593, 595 (1987), quoting *Food & Commercial Workers Local 1222 (FedMart Stores)*, supra, 262 NLRB at 819.